Supreme Court, U.S.
FILED

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No. _____

In the
SUPREME COURT OF THE UNITED STATES

Zena D. Crenshaw, *Petitioner,*

v.

Anita M. Hodgson, et al., *Respondents*

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Zena D. Crenshaw, Petitioner *Pro Se*
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Question Presented For Review

1. Whether the United States Court of Appeals for the Seventh Circuit transgressed your petitioner's right to due process and equal protection by affirming a district court decision against her upon essentially determining that bias was not inevitable when the trial judge became a central figure in the case; selected his own successor after exonerating an alleged accomplice and impugning the plaintiff's personal and professional character on record; his magistrate was linked to an apparent crime by the plaintiff and thereafter rejected her contentions, categorically; and the trial judge's successor responded to the situation by entering summary judgment for the defendants on the plaintiff's federal claims, rejecting all of her discovery contentions *sub silentio*.

Parties To The Proceeding

Anita M. Hodgson
Ralph L. Cohen
Bonnie Gallivan
Ice Miller Donadio & Ryan
Joan Antokol
Hoffmann LaRoche, Inc.

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"If we focus on fairness to the particular litigants, . . . a careful study of Judge (Moody's) analysis of the merits of the underlying litigation suggests that there is a greater risk of unfairness in upholding the judgment in favor of (the defendants) than there is in allowing a new judge to take a fresh look at the issues." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 at 868 (1988) 20

The Honorable Harlington Wood, Jr., Michael S. Kanne and Ilana Diamond Rovner resolved this case by unpublished order, but have yet to announce the law compelling them to condense the underlying summary judgment response of 116 pages [with about eleven hundred pages in exhibits] to one (1) paragraph of operative facts, all supposedly without weighing evidence, assessing its truthfulness, making credibility determinations, and/or improperly disregarding inferences 24

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In the
Supreme Court of the United States

Zena D. Crenshaw, *Petitioner,*

v.

Anita M. Hodgson, et al., *Respondents*

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

Zena D. Crenshaw respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit, affirming a summary judgment of the United States District Court for the Northern District of Indiana at Hammond, dismissing her federal claims brought against the respondents pursuant to 42 U.S.C. §§1983 and 1985.

Opinions Below

The opinion of the court of appeals, including its order on petition for rehearing, and that of the district court are unreported and set forth, respectively, as Appendix A, B and C.

Jurisdiction

On December 20, 2001, the court of appeals entered its judgment affirming a summary judgment by the United States District Court for the Northern District of Indiana at

Hammond, dismissing your petitioner's federal claims brought against the respondents pursuant to 42 U.S.C. §§1983 and 1985. *(Appendix A)*. She petitioned the appellate court for rehearing with a suggestion of rehearing *en banc* on January 2, 2002. That petition was denied on February 6, 2002. *(Appendix B)*.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

The jurisdiction of the district court was invoked pursuant to 28 U.S.C. §§1331 (federal question), 1343 (deprivation under color of state law or regulation), 2201 (Federal Declaratory Judgment Act) and 1367 (pendent jurisdiction).

Statement Of The Case

This case is for an unconstitutional abuse of process, brought pursuant to 42 U.S.C. §§1983 and 1985 as well as Indiana law by your petitioner, an African American, female lawyer. *(See, Pltf's 1st Amd Cmplt, D.E. 48)*. She alleged that the respondents conspired among themselves and with a state judge to secure judgment against her exceeding $14,000, and thereby retaliate for her efforts to expand industry-wide liability for Hoffmann LaRoche, Inc., primarily if not exclusively because of her race and sex. *(See, Pltf's 1st Amd Cmplt, D.E. 48)*. Your petitioner contends that the referenced judgment was entered against her without personal or subject matter jurisdiction due to the lack of an underlying case and controversy premised on Indiana Trial Rule 11. Nonetheless, the aforementioned judge, former defendant Jeffrey J. Dywan, was dismissed by district court judge Rudy Lozano pursuant to the doctrine of judicial immunity. *See, Crenshaw v. Dywan, et al.*, 34 F.Supp. 707 at 710-714 (N.D. Ind. 1999).

Less than four (4) months after Anita M. Hodgson transferred this case from state court, your petitioner as plaintiff moved for disqualification of Judge Lozano pursuant to 28 U.S.C.§455(b)(1). *(Pltf's 1st Disq. Mtn., D.E. 16).* The motion projects that the plaintiff will ". . . propound discovery upon the Honorable Judge Rudy Lozano and proceed to take his deposition . . . to produce evidence relevant to her aforementioned claim and/or that could reasonably lead to the discovery of admissible evidence as to said claim." *(Pltf's 1st Disq. Mtn., p 2, ¶5, D.E. 16).* It notes that "(o)n July 29, 1993, Judge Lozano granted the respective defendant's motion to sanction (the undersigned) and on March 31, 1994, imposed a monetary judgment against her accordingly. *Robert Buggs v. E.J.&E Railroad,* Cause Number H92-0175, U.S. Dist. Court, N.D. of IN, Hammond Div., Order of 7/29/93 and 3/31/94". *(Pltf's 1st Disq. Mtn., p 3, ¶7, D.E. 16).* It contends "(t)here are apparent parallels between the sanction imposed upon (her) by the Honorable Rudy Lozano and that levied upon her by defendant Dywan". *(Pltf's 1st Disq. Mtn., p 3, ¶8, D.E. 16).* The motion concludes that "(t)he motives of each judge with regard to the sanctions at issue will likely be or involve a disputed evidentiary fact" and "(t)he Honorable Judge Rudy Lozano has relevant personal knowledge, at least as to his own motives". *(Pltf's 1st Disq. Mtn., p 53, ¶13-14, D.E. 16).*

In further defense of her first motion for disqualification, the plaintiff elaborated:

> . . .
>
> Though it may be proper given the constitutional rights at issue, she need not resort to Judge Lozano's mental impressions for probative data. Inspiring events involving her before his ascent to the bench may prove relevant. *See, Ash v. Chandler,* 530 N.E.2d 303 (Ind. App. 3 Dist. 1988).

. . .

(Pltf's Rply, p 2, D.E. 20). (emphasis added).

Judge Lozano subsequently determined that "(i)n her motion for disqualification, Crenshaw does not imply that the Court has any extrajudicial knowledge." *Crenshaw v. Dywan et al.,* 34 F.Supp.2d 707 at 709 (N.D. Ind. 1999). He adds "(b)ecause the Court will not submit to the deposition, there is no need for the Court to recuse from this case." *Id. at 710.*

In support of propounding a subpoena *duces tecum* upon Judge Lozano, your petitioner explained:

. . .

> The plaintiff must prove that any consistency between the case prompting this litigation and alleged pattern(s) of bias against minority attorneys is not fortuitous. The fact finder will more likely conclude that disposition of the precipitating case was contrived as suggested if it significantly parallels *Buggs v. E.J.&E. Railroad,* a predecessor reportedly enhancing identical pattern(s). Any direct or indirect link between the presiding judges may move these kindred cases further beyond coincidence. The plaintiff initiated discovery to confirm the extent to which members of SPANGLER, JENNINGS & DOUGHERTY served *pro tempore* for Room One of the Lake Superior Court, Civil Division, while the subject case pend before it. Relevant, mutual influences may become apparent by such investigation.

. . .

(Pltf's Subpna Spt, p 4, D.E. 32).

She added:

> . . .
>
> The plaintiff maintains that the circumstances common between her state and federal sanctions, reasonably precipitate discovery to qualify the similar incidents as parallel transactions. Discovery may reveal a scheme, personal between Judge Dywan and Judge Lozano; indicative of a practice or policy for courts in Lake County, Indiana; directed at a defined class; targeting the plaintiff; generating an extrajudicial motive for sanctioning her; and/or prompting Judge Dywan to conspire with Anita Hodgson.
>
> . . .

(Pltf's Subpna Spt Rply, p 2, D.E. 36).

It was upon her subsequent motion that Judge Lozano disqualified himself.

Former defendant Jeffrey J. Dywan, prevailed on his motion to dismiss before Judge Lozano removed himself from the case. *See, Dywan at 714.* The ruling never acknowledges those of the plaintiff's contentions, leading her to conclude as follows:

> . . .
>
> There was never a dispute between the plaintiff and Hodgson's clients for Dywan to settle. By entering judgment against the plaintiff in favor of Hodgson's client, Judge Dywan disposed of a case and controversy that did not exist in any substantive manner.

> "The case must be `of sufficient immediacy and reality' to warrant . . . relief." *Genentech, Inc. v. Eli Lilly and Co.*, 998 F.2d 931 at 936 (Fed. Cir. 1993). Absent such a case and controversy, there is not subject matter jurisdiction for a court to exercise. *See, City of Indianapolis at 870, Ball Corporation v. American National Can Company*, 846 F.Supp. 731 (S.D. Ind. 1994) and *Genentech, Inc. v. Eli Lilly and Co.*, 998 F.2d 931 at 936 (Fed. Cir. 1993). Accordingly, Dywan's judgment between the plaintiff and Hodgson's client is void.
>
> . . .
>
> *(Pltf's Brf Answrg Dywan Mtn to Dsms, p 4, D.E. 11).*

Judge Lozano chastises the plaintiff:

> . . .
>
> The Court is very concerned with the lack of legal research exhibited by Crenshaw and what can be interpreted as an attempt to "judge-shop." *See In the Matter of National Union Fire Ins. Co. of Pittsburge, Pa.*, 839 F.2d 1226, 1229 (7th Cir. 1988) ("judges have an obligation to litigants and their colleagues not to remove themselves needlessly . . . because a change of umpire . . . [may] facilitate judge-shopping"); *Sullivan v. Conway*, 157 F.3d 1092, 1096 (7th Cir. 1998) (noting that <u>creating the ground on which an attorney seeks recusal</u> is "arrant judge-shopping"). Furthermore, while it is unclear whether Crenshaw chose to pursue this matter on appeal, as an attorney, Crenshaw

should know that "[t]he proper procedure for a party who wishes to contest the legality of a court order enforcing a judgment is to appeal that order and the underlying judgment." *Henry v. Farmer City State Bank,* 808 F.2d 1228, 1239 (7th Cir. 1986); *Boalbey v. Whiteside Cty. Bd. Whiteside Cty., Ill.,* No. 92C20040, 1992 W.L. 373038, *5 (N.D. Ill. Dec. 4, 1992). Therefore, this Court reserves the right to issue sanctions against Crenshaw.

Dywan at 713-714. (emphasis added).

The matter was isolated for immediate appeal. It was claimed that "(i)n order to leave Judge Dywan completely unfettered by the threat of personal liability, this case must be laid to rest with the entry of final judgment." *(Dywan Mtn to Dsms Memo, p 8, D.E. 10).*

In eventuallly disqualifying himself from this case, Judge Lozano states:

. . .

In the first place, Judge Lozano recalls litigating against Crenshaw in the *Ash* case and unequivocally states that Crenshaw's allegations of his improper conduct are completely false. The alleged conversation between Judge Lozano and Crenshaw in the recessed courtroom of Lake Superior Court in East Chicago simply did not occur, and, contrary to Crenshaw's other allegations, Judge Lozano did not act inappropriately in any other aspect of this case. In further support of the fact that Crenshaw's allegations are false, the Court notes Crenshaw waited over twelve years

before first making them. She never brought her allegations to the attention of the Indiana Supreme Court Disciplinary Commission at the time of the alleged incidents. She also failed to raise her allegations with the Lake Superior Court during the *Ash* case, either in the form of a motion for state Rule 11 sanctions or in any other manner. To the Court's knowledge, Crenshaw did not even bring her allegations to the attention of a senior partner in her own law firm. Furthermore, Crenshaw's silence cannot be attributed to the fact that she was an inexperienced attorney too confused by Judge Lozano's alleged behavior to notify anyone, as her motion appears to indicate. (Mot. at 4.) Indeed, Crenshaw herself states that she moved for state Rule 11 sanctions against Judge Lozano's co-counsel, hardly the action of an attorney too inexperienced and confused to respond to what she perceives to be improper action against her. (Id. at 5.)

In addition, while Crenshaw states in her motion that she appeared before Judge Lozano after he took the bench in at least two cases aside from the instant suit, the Court notes that in neither of these cases did she raise her current allegations against Judge Lozano. (Id. at 6-10.) Indeed, even in the instant case, Crenshaw did not raise her allegations about Judge Lozano's personal behavior toward her in *Ash* from the outset or even in her first motion to disqualify Judge Lozano from this case. Thus, the number of opportunities that Crenshaw had to raise her

allegations but did not further supports the fact that the allegations are false. As a final matter in this regard, the Court notes that despite the false allegations that Crenshaw has raised against Judge Lozano, Judge Lozano has searched his conscience and finds that he is not personally biased against Crenshaw because of these allegations or for any other reason.

. . .

(Lozano Disq. Order of 2/15/00, p 5-6, D.E. 78). (emphasis added).

Based on his foregoing contentions, Judge Lozano determined as follows:

. . .

As a final matter, the Court is concerned with Crenshaw's false allegations concerning Judge Lozano's improper conduct toward her in the *Ash* case, allegations that she has sworn to be true to the best of her knowledge and recollection under penalty of perjury. (Mot. at 18.) The Court also notes that this is Crenshaw's second motion for the recusal of Judge Lozano, a motion that alleges many incidents occurring years ago that could have just as easily been included in her first motion. (Mot. at 2-15.) As such, the Court, in accordance with its duty under Canon 3D(2) of the Code of Judicial Conduct to report credible information of professional conduct violations, is informing the Indiana Supreme Court Disciplinary Commission of Crenshaw's filing of the instant motion. It appears to the Court that the motion's sworn

> allegations, which the Court finds to be categorically false, were made for the improper purpose of manipulating the judicial proceedings in this case in violation of Rules 3.1 and 3.3 of the Indiana Rules of Professional Conduct, which prohibit a lawyer from knowingly making a false statement of material fact to a tribunal. Ind. R. of Prof. Conduct R. 3.1, 3.3(a)(1); N.D. Ind. L. R. 83.5(f) (stating that attorneys practicing before this Court are governed by the Indiana Rules of Professional Conduct); cf. *In re Betts*, 143 BR. 1016, 1020 (Bankr. N.D. Ill. 1992) (noting that parties should not make frivolous claims for the purpose of forcing a judge to recuse).
>
> *(Lozano Disq. Order of 2/15/00, p 10-11, D.E. 78).* (emphasis added).

Your petitioner never prevailed on a single disputed matter she presented to the district court thereafter.

On January 21, 2000, your petitioner filed her first motion to compel in this case. *(Pltf's 1st Mtn to Cmpl, D.E. 74).* The motion remained pending on July 20, 2000 when she preliminarily responded to the defendants' motion for summary judgment. *(See, Pltf's Ver. Rqst for Extsn; Sptng Afdvt, Brf & Ex. A'-G', D.E. 88-91).* The response includes a 26 page brief,[1] essentially contending that the defendants' motion does not comply with Federal Rule of Procedure 56. *(See, Pltf's Brf Sptng Ver. Rqst, D.E. 90).* Your petitioner's

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[1]Only the plaintiff's valediction and signature appears on page 26.

subsequent reply further emphasized her contention that "(t)he admissible evidence of record does not even contradict those allegations of plaintiff's first amended complaint that reasonably support an inference of conspiracy." *(Pltf's Rply to Dfts' Opp. /Ver. Rqst for Extsn, p 2, D.E. 93).* The reply notes:

> The defendants emphasize that this case was filed in August of 1998. However, most of them (i.e. all but defendant Hodgson), would not even plead until late November of 1999. Briefing generated by the plaintiff's outstanding motion to compel demonstrates that the parties disagree on even the fundamental scope of discovery. . . . As previously noted, resolution of the plaintiff's motion to compel, "filed herein on January 21, 2000 . . . could eliminate some current discovery disputes between the parties and allow (her) to proceed with party depositions." . . . In the meantime, she continues to factor the impact of numerous proceedings on this case, some of which are pending. . . .
>
> *(Pltf's Rply to Dfts' Opp. /Ver. Rqst for Extsn, footnote #1, D.E. 93).*

Subsequently, on August 24, 2000, the same day on which she equated your petitioners first motion to compel with a quest for "carte blanche discovery", Magistrate Springmann set the discovery deadline herein for November 1, 2000 and required the plaintiff to answer the defendants' motion for summary judgment by December 4, 2000. *(Springmann Order of 8/24/00, p 3, D.E. 94).* Substantial discovery litigation ensued.

Your petitioner reported to the trial court that she sent a draft of her second motion to compel with supporting brief and exhibits to her opposing counsel, trying to amicably resolve the discovery dispute they reflect, to no avail. *(Pltf's 2nd Mtn to Cmpl, p 11, ¶ 17 & 18, D.E. 99).* A near identical version of the papers was submitted for court intervention on September 28, 2000. *(Pltf's 2nd Mtn to Cmpl, Sptng Brf & Exs., D.E. 99-100).* The supporting brief initially wrangled with the predicament imposed by the timing and substance of Magistrate Springmann's discovery orders. *(Pltf's 2nd Mtn to Cmpl Sptng Brf, p 1-5, D.E. 100).* It concludes[2]:

> The Seventh Circuit affords Ms. Crenshaw ". . . the fullest opportunity to adduce evidence in support of her claim" which she has made for an unconstitutional abuse of process. *See, Cohen at 827.* The defendants have allowed her the least opportunity to do so, which resistance this Court rewarded by waiting until August 24, 2000 to announce

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[2]A corresponding footnote provides:

> The Court cites *Grimes v. Louisville and Nashville R. Co.*, 583 F.Supp. 642 (1984), to buttress its denial of so-called "cart blanche discovery". *(See, Mtn to Cmpl Order of 8/24/00, p 5).* However, the *Grimes* case does not fully quote *Cohen* or emphasize that both cases deny discovery when a requisite claim for relief is not stated. *See, Grimes at 650. (Pltf's 2nd Mtn to Cmpl Sptng Brf, footnote #7, D.E. 100).*

its departure from the following precedent:

> In many cases of conspiracy essential information can only be produced through discovery, and the parties should not be thrown out of court before being given an opportunity through that process to ascertain whether the linkage they think may exist actually does.
>
> *Sparkman v. McFarlin,* 601 F. 2d 261 at 277 (C.A. 7th 1979). (citation omitted). (emphasis added).

The plaintiff must proceed with more certainty in this case. Unless the defendants acquiesce, she can only pursue discovery that will definitely establish a critical link in her case and must explain how it will do so before the evidence is produced. (See, Mtn to Cmpl Order of 8/24/00). This burden translates into about 60 days for the plaintiff to initiate an invincible motion to compel responses to most of the written discovery that she propounded upon the defendants, contour party depositions to its outcome, and finalize discovery on more peripheral matters that she intentionally postponed, maneuvering to avoid related obstacles, potentially created by perceived gaps in her central case. In the meantime, her deadline fast approaches for stating all the

genuine issues of fact to be litigated in this convoluted case, still unfolding.

(Pltf's 2nd Mtn to Cmpl Sptng Brf, p 18-19, D.E. 100).

On October 24, 2000 Magistrate Springmann took the matter under advisement, refusing to extend discovery as requested and otherwise indicating she was no more impressed with the plaintiff's second motion to compel than she was by the plaintiff's first discovery motion. *(Springmann Order of 10/24/00, D.E. 117).*

On October 30, 2000, your petitioner reported:

. . .

It is difficult to believe that Joan Antokol resorted to blatant fraud just to get out of this case. Nonetheless, the pivotal question is whether she accurately reported the role of Jane Matthews in precipitating events. If she did not, the Court could consider reinstating her as a defendant. *See, Neuberg v. Michael Reese Hosp. and Medical Center,* 166 F.R.D. 398 at 399-400 (D.C. N.D. Ill. 1996). If she did, the Court should consider whether the defendants or either of them and/or Ms. Antokol conspired to suppress or otherwise concealed that information through illegal means. *See, Feldberg, 862 F.2d 622 at 626 – (". . . the prosecutor . . . raised questions sufficient to call for a careful inquiry in the district court.").*

(See, Pltf's Ver Rsp of 10/30/00 p 11, D.E. 121).

By the time a possibility of fraud on the court became apparent, your petitioner was defeated in her effort to depose defense counsel William P. Wooden and former defendant Dywan as well as conduct a records deposition, targeting files of non-party Ronald E. Elberger. She petitioned Judge Moody[3] to allow the aforementioned depositions. *(See, Ver. Objs., D.E. 123).* She subsequently responded to the defendants' motion for summary judgment, providing an abundance of documents and third-party, sworn statements for support. *(See, Pltf's Sum Jdgmt Rsp w Statemt of Issues, Afdvt & Exs., D.E. 129-132).*

On March 1, 2001, Magistrate Springmann ruled on the plaintiff's second motion to compel. The Order concludes:

> . . .
>
> The court has reviewed Plaintiff's motion, attached exhibits A-J, supporting brief [DE 100] and reply brief [DE 115]. The arguments presented are the same as those raised in Plaintiff's first Motion to Compel [DE 74]. Those arguments were rejected by the court [DE 95]. Defendants' brief in opposition to motion is well-taken in all respects. The court incorporates by reference the analysis presented by the defense as its own, and ORDERS that the Second Motion to Compel Discovery [DE 99] be DENIED.

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[3]Judge Lozano concluded his disqualification order by directing "The Clerk . . . to reassign this case to District Judge James T. Moody." *(Lozano Disq. Order of 2/15/00 at p 11, D.E. 78).*

(Springmann Order of 3/1/01, D.E. 145).

Your petitioner subsequently reported to Judge Moody:

> . . .
>
> 12. The plaintiff's first motion to compel is two (2) pages. Its supporting brief is four (4) pages and the corresponding reply is three (3) pages. *(DE 74&77);*
>
> 13. Her second motion to compel is thirteen (13) pages. Its supporting brief is nineteen (19) pages and the corresponding reply is four (4) pages. *(DE 99,100&115);*
>
> 14. The plaintiff's first motion to compel hardly seems to encompass her second;
>
> . . .

(Ver. Objs., p 3-4, ¶12-14, D.E. 147).

After citing negative personal undertones, ratified by Magistrate Springmann from the defendants' briefing, your petitioner referenced extrajudicial motives, arguably attributable to an apparent forgery associated with a letter Magistrate Springmann seems to have generated while in private practice, possibly tainting her discovery orders as of March 2001. *(Ver. Objs., D.E. 147).* Without addressing the potential impact of discovery withheld from the plaintiff or the propriety of withholding that discovery, Judge Moody granted summary judgment for the defendants, dismissing the plaintiff's federal claims with prejudice. *(App. C).* He made no reference to the antics of Joan S. Antokol, nor their implications, but chided the plaintiff for submitting "an oppressive" summary judgment response. *(See, App. C).*

Reasons For Granting The Writ

According to the U. S. Court of Appeals for the Seventh Circuit, "(a)lmost forty years ago, (this Court) reaffirmed a simple but fundamental tenet of due process — 'no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.' *Trust & Inv. Advisers, Inc. v. Hogsett,* 43 F. 3d 290 at 295 (C.A. 7th 1994). In this case, Judge Rudy Lozano determined otherwise. He digressed from the role of district court judge to that of an occurrence and character witness as to extrajudicial matters; resumed his role as judge; and then made post-disqualification findings and determinations based on his own testimonial, having insulated himself from cross-examination through judicial ruling. Former U. S. Supreme Court Justice Brennan reported that "while the influence of any single participant in (the collective deliberation) process can never be measured with precision, experience teaches us that each member's involvement plays a part in shaping the court's ultimate disposition." *Aetna Life Insurance Co. v. Lavoie,* 475 U.S. 813 at 831 (1986). That outcome assumed the shape of wholesale, district court losses for your petitioner once Judge Lozano essentially deemed her a liar as a matter of law.

The Seventh Circuit explains that "(a) decision adverse to a party — even one adverse on all of the issues raised — is not evidence of bias where that decision is supported by the law and facts, as is the case here." *(See, App A, p 3).* Of course, your petitioner's appellate brief quoted the following trial-court determination, citing the docket entry in which and the corresponding page on which it appears:

> . . . by alleging a conspiratorial agreement to violate her rights, evidenced by the request for and granting of attorney's fees against her when her conduct had not previously been questioned, Crenshaw has met her burden by `simply plead[ing] <u>facts from which a conspiracy can be inferred.'</u>
>
> *Appellant's Brief, p 28.* (emphasis added).

The brief notes that Judge Lozano's successor ". . . does not make clear how the law . . ." compels a different analysis. *See, Appellant's Brief, p 28.* Neither does the Seventh Circuit. *(See, App A).*

Without citing law or forging precedent through a published decision, the district court explained:

> . . .
>
> Crenshaw's lengthy response and stack of exhibits chronicle her legal career and saga with the Indiana Disciplinary Commission, the Indiana Civil Rights Commission, the Judicial Qualifications Committee, the United States Judiciary Committee, and various other agencies and associations. <u>This information is largely irrelevant to her claims</u>.
>
> . . .
>
> *(App C, p 8-9).* (footnote omitted). (emphasis added).

Neither the <u>objective</u> basis of that determination nor the Seventh Circuit's apparent decision to ratify it, is clear. *(See, App A).*

As your petitioner indicated in her appellate briefing, "(r)esort to `the substantive law will identify which facts are material.' *See, Cameron v. Frances Slocum Bank & Trust Co.*, 824 F.2d 570 at 574 (C.A. 7th 1987)." *Appellant's Brief, p 28.* She referenced substantive law in concluding as follows:

> The plaintiff's summary judgment response describes ". . . a radical departure from normal judicial procedure, a departure which, if proven, could provide the factual basis for a reasonable inference that the immune judge agreed (either explicitly or implicitly) with another defendant to violate (the plaintiff's) constitutional rights.' *See, Sparkman at 279* and *Pltf's Sum Jdgmt Rsp w Statement of Issues, Afdvt & Exs.*, D.E. 129-132.
>
> *Appellant's Brief, p 28-29.*

The district and circuit court essentially pronounced law when they respectively deemed your petitioner's submission inadequate to establish conspiracy pursuant to the foregoing principle. Her supporting facts, deemed immaterial to the kind of "radical departure" described, should be identified if not published and/or analogized to published law, consistent with their immateriality being a matter of law. *See, 7th C.R. 53(c)(2).* Otherwise the law may be mocked and an underclass of federal litigants forged whose cases are resolved by whim or caprice, safely insulated from critical review by unpublished decisions. The process has begun, at least with your petitioner, and will advance only as far as this Court allows.

> "If we focus on fairness to the particular litigants, . . . a careful study of Judge (Moody's) analysis of the merits of the underlying litigation suggests that there is a greater risk of unfairness in upholding the judgment in favor of (the defendants) than there is in allowing a new judge to take a fresh look at the issues." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 at 868 (1988).

The respondents have not insisted that the state court judgment culminating with this petition was determined impartially. Instead, they contend that ". . . if Judge Dywan acted out of some personal bias against Crenshaw, that suggests an independent act by Judge Dywan and is inconsistent with any agreement (i.e. conspiracy) among Dywan and Defendants to violate the civil rights of Crenshaw." *(Apees' Brf p 17).* Actually, such bias reconciles with ". . . a radical departure from normal judicial procedure, a departure which, if proven, could provide the factual basis for a reasonable inference that the immune judge agreed (either explicitly or implicitly) with another defendant to violate (the plaintiff's) constitutional rights." *See, Sparkman v. McFarlin,* 601 F.2d 261 at 279 (C.A. 7th 1979). Yet, the district court found ". . . Crenshaw has provided no evidence that Judge Dywan and the defendants reached an understanding to deprive her of her constitutional rights, nor that the defendants were willful participants in any joint activity with Judge Dywan . . ." *(App C, p 12).* (emphasis added). The respondents pursued and secured an unfounded judgment exceeding $14,000 against Ms. Crenshaw and her clients. *(See, Appees' Brf p 8-10).* Yet, the district court found ". . . there is no

evidence to support an inference that the defendants conspired to inflict injury or harm on Crenshaw, and no reasonable jury could conclude otherwise." *(App C, p 14).* (emphasis added).

On October 30, 2000, your petitioner reported:

. . .

> It is difficult to believe that Joan Antokol resorted to blatant fraud just to get out of this case. Nonetheless, the pivotal question is whether she accurately reported the role of Jane Matthews in precipitating events. If she did not, the Court could consider reinstating her as a defendant. *See, Neuberg v. Michael Reese Hosp. and Medical Center,* 166 F.R.D. 398 at 399-400 (D.C. N.D. Ill. 1996). If she did, the Court should consider whether the defendants or either of them and/or Ms. Antokol conspired to suppress or otherwise concealed that information through illegal means. *See, Feldberg, 862 F.2d 622 at 626 – (". . . the prosecutor . . . raised questions sufficient to call for a careful inquiry in the district court.").*
>
> *(See, Pltf's Ver Rsp of 10/30/00 p 11, D.E. 121).*

The same court that referred Ms. Crenshaw for disciplinary action, purportedly for manipulating judicial process through deceit, ignored the foregoing, verified report. According to the respondents:

. . .

> Since Crenshaw did not ask the court to withhold ruling on the summary judgment and to extend the time for

> answering Defendants' motion for summary judgment until the discovery motions and objections had been ruled upon, there was no reason for the district court to suspend ruling on the motion for summary judgment, after the deadlines had expired, per the order establishing the discovery deadline and the summary judgment response time as December 4, 2000.
>
> . . .
>
> *(Apees' Brf p 29).*

Actually, the discovery motions and objections they reference were rejected *sub silentio* when summary judgment entered in their favor. *See, Korf v. Ball State University,* 726 F.2d 1222 at footnote 7 (C.A. 7th 1984).

Ms. Crenshaw immediately appealed to Judge Lozano's successor when the prospect of bias on the part of Magistrate Springmann became substantial. *(See, Ver. Objs. p 4-5, ¶ 18-23, D.E. 147).* Again without factual analysis and/or citation of precedent, the respondents submitted:

> Assuming, but never showing, that Judge Lozano and Magistrate Judge Springmann harbored a bias against Crenshaw, Crenshaw then assumes that Judge Lozano and Magistrate Judge Springmann somehow inflicted their bias upon Judge Moody.
>
> *(Apees' Brf p 21).*

Though his disposition was not apparent prior to final judgment, the respondents reported that ". . . Crenshaw presents nothing on appeal as to Judge Moody because Crenshaw never filed any motion to disqualify Judge Moody based on his alleged bias, as required to raise such an issue." *(Apees' Brf p 21).* "But when the act complained of is the act . . . done unexpectedly at the end of the proceeding, when the plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way could not come here." *Saunders v. Shaw,* 244 U.S. 317 at 320, 61 L.ed. 1163 at 1165 (1917).

As your petitioner's appellate brief indicates:

> The Seventh Circuit ". . . (reviews) *de novo* a district court's grant of summary judgment, viewing the record and all reasonable inferences drawn from it in the light most favorable to the party opposing the motion . . . This standard is applied with added rigor in (employment-related) discrimination cases where intent and credibility are crucial issues . . ." Accordingly, (the Seventh Circuit) will affirm the decision of the district court only if, had the record before that court been the record of a complete trial, the defendant would have been entitled to a directed verdict. *Sarsha v. Sears, Roebuck & Co.,* 3 F.3d 1035 at 1038 (C.A. 7th 1993).
>
> *Appellant's Brief, p 27-28.*

Of course, any strict standard for determining whether

genuine issue(s) of material fact exist hardly matters when parties are dismissed and facts are excluded by other mechanisms[4]. Yet the Seventh Circuit refused the relief that should come "(i)f we focus on fairness to the particular litigants, [and] a careful study of Judge (Moody's) analysis of the merits of the underlying litigation [which] suggests that there is a greater risk of unfairness in upholding the judgment in favor of (the defendants) than there is in allowing a new judge to take a fresh look at the issues." *See, Liljeberg v. Health Services Acquisition Corp.,* 486 U.S. 847 at 868 (1988).

> **The Honorable Harlington Wood, Jr., Michael S. Kanne and Ilana Diamond Rovner resolved this appeal by unpublished order, but have yet to announce the law compelling them to condense the underlying summary judgment response of 116 pages [with about eleven hundred pages in exhibits] to one (1) paragraph of operative facts, all supposedly without weighing evidence, assessing its truthfulness, making credibility determinations, and/or improperly disregarding inferences.**

Without noting that your petitioner sought remand of her case for reconsideration upon reassignment, the Seventh Circuit ruled that "Crenshaw

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[4]Judge Lozano dismissed his alleged accomplice on a motion to dismiss while all of your petitioner's discovery contentions were rejected *sub silentio,* precluding submission of facts possibly generated through that discovery. *See, Appellant's Brief, p 3-11.*

has failed to identify with specificity any relevant discovery which she was prevented from obtaining." *(App A, p 4).* Though reportedly limiting its consideration to ". . . bare assertions that further discovery could reveal bias on the part of the district court judges and a conspiracy in the state court and in the federal court as well", the appellate court concluded ". . . she has had ample time for discovery thus far . . ." *(App A, p 4).* Such a limited analysis seems inadequate for a comprehensive assessment of your petitioner's discovery opportunity. Also, its perfunctoriness seems to undermine the rigors of that pivotal standard of review, previously identified.

> Seventh Circuit Rule 53(c)(2) provides:
>
> When the decision does not satisfy the criteria for publication . . . it will be filed as an unpublished order. The order will ordinarily contain reasons for the judgment, but may not do so if the court has announced its decision and reasons from the bench. A statement of facts may be omitted from the order or may not be complete or detailed.
>
> *C.R. 53(c)(2).*

The Honorable Harlington Wood, Jr., Michael S. Kanne and Ilana Diamond Rovner resolved this case by unpublished order, but have yet to announce <u>the law compelling them</u> to condense the underlying summary judgment response of 116 pages [with about eleven hundred pages in exhibits] to one (1) paragraph of operative facts, all supposedly without weighing evidence, assessing its truthfulness, making credibility

determinations, and/or improperly disregarding inferences. Even Judge Moody concurred that "(i)n determining whether a genuine issue of material fact exists, a trial court must view the record and all reasonable inferences drawn therefrom . . ." *(App C, p 10).* (emphasis added). Ostensibly, the standard does not dictate review of some portion of a record under consideration, arguably selected through the reviewer's whim or caprice. Yet, such a relaxed standard seems to have been applied in this case.

> **The deliberative process at the district court level in this case should be vacated to the extent challenged on appeal to allow commencement of a corresponding, impartial trial disposition.**

Your petitioner contends that the deliberative process not only produced error in this case at the district court level, but was permeated with bias. It should be vacated to the extent challenged on appeal to allow commencement of a corresponding, impartial trial disposition — relief more fundamental than the isolated disqualification of a judge. Justice McKenna lends a supportive rationale from another context:

> . . .
>
> The remedy by appeal is inadequate. It comes after trial and if prejudice exists it has worked its evil and a judgment of it in a reviewing tribunal is precarious. It goes there fortified by presumptions, and nothing can be more elusive of estimate or decision than a disposition of a mind in which there is a personal ingredient.
>
> . . .

Berger v. U.S., 255 U.S. 22 at 36 (1921).

Similarly, the Seventh Circuit determined that a `Petitioner is entitled to a neutral detached judge in the first instance.' *Trust & Inv. Advisers, Inc. v. Hogsett*, 43 F.3d 290 at 296 (C.A. 7th 1994).

Any preceding error was compounded by Judge Rudy Lozano's testimonial. Justice Brennan posthumously suggests that it impacted "the collective process of deliberation which shapes the court's perceptions of which issues must be addressed and, more importantly, how they must be addressed." *See, Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813 at 831 (1986). His brethren Justice Blackmun and Marshall counseled:

> . . .
>
> We should not attempt the perhaps futile task of distilling (a judge's) particular contribution to determine whether the result would have been the same had he disqualified himself at the outset. I would not want other appellate courts to read the Court's opinion today to suggest that such an inquiry provides an appropriate guarantee of due process.
>
> . . .
>
> *Aetna Life at 833.*

Judge Lozano postured the district court as the plaintiff's nemesis, a role antithetical to jury trial in this case.

Judge Moody's sentiments may not have escalated to impermissible bias if Judge Lozano had simply withdrawn at the first indication he was a subject of this litigation. Moreover, if the case had been

reassigned in accord with Local Rule 40.1 of the United States District Court for the Northern District of Indiana, Magistrate Springmann may not have presided, having made potentially critical discovery rulings, when she was linked to an apparent forgery stashed among the records of *Ash v. Chandler. See, L.R. 40.1.* `In many cases of conspiracy essential information can only be produced through discovery, and the parties should not be thrown out of court before being given an opportunity through that process to ascertain whether the linkage they think may exist actually does.' *Sparkman at 277.*

Conclusion

For the foregoing reasons, your petitioner prays that this Court exercise its power of supervision to insure the proper functioning of the federal judiciary; address the important federal question presented by this petition; and resolve the referenced conflict between this case and applicable precedent of this Court.

RESPECTFULLY SUBMITTED,

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APPENDIX

APPENDIX A
United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Argued November 28, 2001
Decided December 20, 2001

Before

Hon. HARLINGTON WOOD, JR., *Circuit Judge*
Hon. MICHAEL S. KANNE, *Circuit Judge*
Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

No. 01-2045

ZENA D. CRENSHAW,	] Appeal from the
	] United States
Plaintiff-Appellant,	] District Court for
	] the Northern
	] District of
v.	] Indiana, Hammond
	] Div.
ANITA M. HODGSON, *et al.,*	]
	] No. 98 C 522
	]
Defendants-Appellees.	] James T. Moody,
	] *Judge*

ORDER

Zena Crenshaw filed suit alleging claims under 28 U.S.C. §§1983 and 1985 and asserting a state-law abuse of process claim against the defendants. The genesis of that suit was a prior case, in which Crenshaw represented Sylvia Ann Sanchez in a personal injury case against

Hoffman-LaRoche, Inc. in 1993 in Lake County Superior Court. That Sanchez complaint stemmed from the allergic reaction Sanchez' daughter suffered when she took the generic form of the drug Bactrim. The complaint alleged that Hoffman-LaRoche was strictly liable for failing to provide adequate warning for its drug Bactrim. Because the complaint asserted that the generic drug taken by Sanchez' daughter was manufactered by Biocraft Laboratory, and did not allege that Hoffman-LaRoche designed, manufactured, sold, or provided labeling for the drug, the Lake County court dismissed the complaint for failure to state a claim. Crenshaw, on behalf of Sanchez, then filed an amended complaint alleging that Hoffman-LaRoche engaged in a civil conspiracy with Biocraft to provide inadequate product warnings. When Crenshaw refused to voluntarily dismiss the amended complaint, Hoffman-LaRoche moved for dismissal and attorney fees, arguing that the amended complaint was frivolous. The court granted that motion and awarded $14,134.00 in fees. Crenshaw appealed the fee award, and the Indiana Court of Appeals reversed, holding that the complaint was legally sufficient because the facts had to be taken as true at that stage of the proceedings, and therefore it was improper to award attorneys' fees.

Crenshaw subsequently initiated the present litigation against the judge who granted the attorney fees, the attorneys and law firm who represented Hoffman-LaRoche in the Sanchez case, and Hoffman-LaRoche. The complaint included claims pursuant to §§ 1983 and 1985, as well as a state law abuse of process claim. The district court granted the defendant's motion for summary judgment on the federal claims, and dismissed without prejudice the state law claim.

Crenshaw raises a number of challenges on appeal, none of which have merit. She raises no direct challenge to the legal reasoning underlying the summary judgment decision. Instead, she asserts that Judge Moody was biased, and that the bias was not apparent until the decision was issued granting summary judgment. Crenshaw never asserted any claim of bias below, but even assuming we can consider the claim on appeal, she has failed to raise any non-frivolous claim of bias on appeal. Her claim essentially is that Magistrate Springmann and Judge Lozano, who participated in prior proceedings in this case, were biased against her, and that their bias must have influenced Judge Moody. Although Judge Lozano granted Crenshaw's motion for his disqualification, he did so based on the appearance of bias rather than on any actual bias, and in any event there is no evidence that Judge Lozano communicated with Judge Moody regarding this case, or otherwise exercised any influence over Judge Moody's decision. Regarding Magistrate Springmann's alleged bias, Crenshaw again failed to raise any such claim in the district court, and has failed to supply any reason on appeal for this court to hold that she was in fact biased. Crenshaw also seeks to demonstrate bias on the part of Judge Moody by asserting that Judge Moody failed to rule in her favor on any issue in Crenshaw's extensive briefing. A decision adverse to a party - even one adverse on all of the issues raised - is not evidence of bias where that decision is supported by the law and facts, as is the case here. *See Gleason v. Welborn,* 42 F.3d 1107, 1112 (7th Cir. 1994); *Byner v. Nezhat,* 261 F.3d 1075, 1103 (11th Cir. 2001). There are no non-frivolous allegations of bias here.

Crenshaw also challenges the summary judgment order by arguing that she should have been allowed to conduct further discovery. In order to prevail on this

claim, Crenshaw must demonstrate that the additional discovery that she sought was likely to generate a genuine issue of material fact. *Woods v. City of Chicago,* 234 F.3d 979, 990-991 (7th Cir. 2000). Furthermore, a court's decision to consider a motion for summary judgment before allowing certain discovery is reviewed for abuse of discretion. *Id.* Crenshaw has failed to identify with specificity any relevant discovery which she was prevented from obtaining. Even considering her generalized allegations, she has failed to demonstrate that additional discovery is likely to generate a genuine issue of fact. Instead, she relies on bare assertions that further discovery could reveal bias on the part of the district court judges and a conspiracy in the state court and in the federal court as well. Those bare assertions, however, are insufficient where, as here, she has had ample time for discovery thus far, and has failed to obtain any evidence of the alleged conspiracy. *Id.; see generally* Wright & Miller, FEDERAL PRACTICE AND PROCEDURE, 10B Fed. Prac. & Proc. Civ.3d § 2741 (2001). The district court did not abuse its discretion in deciding the summary judgment without allowing further discovery.

The other issues raised by Crenshaw are unrelated to the summary judgment decision, or are not preserved for appeal. As they would not impact the summary judgment order that is before this court, they are not a basis for reversal.

AFFIRMED.

APPENDIX B

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Argued November 28, 2001

Decided December 20, 2001

Before

Hon. HARLINGTON WOOD, JR., *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

No. 01-2045

ZENA D. CRENSHAW,	] Appeal from the
	] United States
Plaintiff-Appellant,	] District Court for
	] the Northern
	] District of
v.	] Indiana, Hammond
	] Div.
ANITA M. HODGSON, *et al.,*	]
	] No. 98 C 522
	]
Defendants-Appellees.	] James T. Moody,
	] *Judge*

ORDER

Plaintiff-appellant filed a petition for rehearing and petition for rehearing en banc on January 2, 2002. No judge in regular active service has requested a vote on the petition for rehearing en banc and all of the judges on the panel have voted to deny rehearing. The petition for

rehearing is therefore DENIED.

APPENDIX C
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

ZENA D. CRENSHAW,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:98 CV 522
	)	
ANITA M. HODGSON, et al.,	)	
	)	
Defendants.	)	

ORDER

This matter is before the court on the defendants' motion for summary judgment and motion to strike or disregard. In her complaint, plaintiff Zena Crenshaw alleges violations of 42 U.S.C. §§ 1983 and 1985 and asserts a state-law abuse of process claim against defendants Anita M. Hodgson, Ralph L. Cohen, Bonnie Gallivan, Julie McMurray, the law firm of Ice, Miller, Donadio & Ryan, and Hoffmann LaRoche, Inc.

Two preliminary matters deserve note. First, defendants correctly note several procedural deficiencies in Crenshaw's response. First, Crenshaw's response brief is an oppressive 116 pages in length and seeks to incorporate by reference another twenty-six pages she filed in support of her request for an extension of time. The 142 pages is far in excess of the twenty-five pages permitted by local rule. *See* LOCAL RULE 7.1 ("Except by permission . . . , no brief shall exceed 25 pages in length . . .") Leave to exceed the page limit is to "be

granted only upon motion supported by extraordinary and compelling reasons." LOCAL RULE 7.1(d). Crenshaw's case does not present the compelling justification contemplated by the Rule.

Second, LOCAL RULE 56.1(a) requires that the nonmoving party:

> serve and file any affidavits or other documentary material controverting the movant's position, together with a response that shall include in its text or appendix thereto a "Statement of Genuine Issues" setting forth, with appropriate citations to discovery responses, affidavits, depositions, or other admissible evidence, all material facts as to which it is contended there exists a genuine issue necessary to be litigated.

Crenshaw's statement of genuine issues is a series of nine questions that she (apparently) finds relevant. There is neither mention of material facts, nor citation to admissible evidence. "[T]he decision whether to apply the [local] rule strictly or to overlook any transgression is one left to [this] court's discretion." *Little v. Cox's Supremarkets,* 71 F.3d 637, 641 (7th Cir. 1995). In the interest of judicial economy, the court will consider Crenshaw's response rather than engender further delay.

Crenshaw's lengthy response and stack of exhibits chronicle her legal career and saga with the Indiana Disciplinary Commission, the Indiana Civil Rights Commission, the Judicial Qualifications Committee, the United States Senate Judiciary Committee, and various

other agencies and associations.[1] This information is largely irrelevant to her claims. The facts which *are* relevant are as follows.

Crenshaw represented Sylvia Ann Sanchez in a 1993 Lake County Superior Court personal injury case against Hoffman LaRoche, Inc. Sanchez's complaint sought to recover for injuries caused by a pharmaceutical drug known as bactrim pediatric suspension. Curiously, Sanchez did not claim that Hoffman LaRoche designed, manufactured, sold, or provided labeling for the product; and in fact, Sanchez's complaint complained that the drug was manufactured by Biocraft Laboratory, Inc., an entity never joined as a party defendant to her suit. Accordingly, on January 25, 1994, Hoffman LaRoche filed a motion to dismiss the complaint. Judge Jeffrey Dywan granted the motion and dismissed the complaint pursuant to IND. T.R. 12(B)(6) for failure to state a claim. Sanchez then filed an amended complaint alleging that Hoffman LaRoche engaged in a "civil conspiracy" with Biocraft to provide inadequate product warnings.

On March 30, 1994, Gallivan, an attorney representing Hoffman LaRoche, contacted Crenshaw and requested that she dismiss the amended complaint as frivolous. Disagreeing, Crenshaw declined to voluntarily dismiss the amended complaint. Hoffman LaRoche accordingly moved to dismiss the first amended complaint and for an award of attorney fees pursuant to IND. CODE § 34-1-32-1, which permitted the recovery of fees for frivolous, unreasonable, or groundless claims. On October 19, 1994, Judge Dywan dismissed the

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[1]Crenshaw's brief seems to tell her story twice, much of her first 50 pages of argument is copied verbatim later in her brief.

amended complaint. Sanchez unsuccessfully appealed Judge Dywan's decision, which was affirmed by the Indiana Court of Appeals on December 21, 1995. On November 27, 1997, an Indiana trial court found that Hoffman LaRoche was entitled to an award of attorney fees pursuant to IND. CODE § 34-1-32 -1(b)(2), and set the matter for hearing on the specific amount, which was later determined, on May 8, 1997, to total $14,134.00. On August 18, 1998, the Indiana Court of Appeals reversed that award.

The individual defendants in the present action are Julie McMurray, an in-house attorney for Hoffman LaRoche who never had any contact with Judge Dywan; three attorneys ---- Ralph Cohen, Bonnie Gallivan and Anita Hodgson ---- who are outside counsel who work with the law firm of Ice, Miller, Donadio and Ryan; and Ice, Miller, Donadio and Ryan and Hoffman LaRoche, who are also party defendants to the present action.

1. Standard of Review

> A motion for summary judgment should be granted when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. In determining whether a genuine issue of material fact exists, "a trial court must view the record and all reasonable inferences drawn therefrom in the light most favorable to the non-moving party." To defeat a motion for summary judgment, the non-moving party cannot rest on the mere allegations or denials contained in his pleadings, but "must present sufficient evidence to show the

> existence of each element of its case on which it will bear the burden at trial." However, neither presenting a scintilla of evidence, nor the mere existence of some alleged factual dispute between the parties or some metaphysical doubt as to the material facts, is sufficient to oppose a motion for summary judgment. The party must supply evidence sufficient to allow a jury to render a verdict in his favor.

Robin v. Espo Eng'g Corp., 200 F.3d 1081, 1087-88 (7th Cir. 2000).

2. 42 U.S.C. § 1983

"The purpose of § 1983 is to deter state actors, and private individuals in collaboration with state officials, from using a `badge of authority' to deprive individuals of rights guaranteed by the Constitution." *Fries v. Helsper*, 146 F.3d 452, 457 (7th Cir. 1998) (quoting *Wyatt v. Cole*, 504 U.S. 158, 161 (1992)). Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage . . . subjects, or causes to be subjected, any . . . person . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . .

42 U.S.C. § 1983. In order to establish a claim pursuant to § 1983, "a plaintiff must demonstrate that: (1) the defendant(s) deprived [her] of a right secured by the Constitution or any law of the United States; and (2) the

deprivation of that right resulted from the defendant(s) acting under color of law." *Fries,* 146 F.3d at 457 (citing *Adickes v. S.H. Kress & Co.,* 398 U.S. 144, 150 (1970)). Crenshaw fails to present any evidence of state action by the defendants. "For an individual to act under color of law, there must be evidence of a *concerted effort* betwen a state actor and that individual." *Fries,* 146 F.3d at 457 (citing *Adickes,* 398 U.S. at 152); *Moore v. Marketplace Rest., Inc.,* 754 F.2d 1336, 1352 (7th Cir. 1985). Because Crenshaw seeks to establish a § 1983 liability via a conspiracy theory, she must also demonstrate that "(1) a state official and private individual(s) reached an understanding to deprive the plaintiff of [her] constitutional rights," *Fries,* 146 F.3d at 457 (7th Cir. 1998) (citing *Starnes v. Capital Cities Media, Inc.,* 39 F.3d 1394, 1397 (7th Cir. 1994)); and "(2) those individual(s) were "willful participant[s] in joint activity with the State or its agents."'" *Fries,* 146 F.3d at 457 (citing *Adickes,* 398 U.S. at 152). Furthermore, while, "generally, private individuals act under color of law when jointly acting with a state official to deprive some person of [her] constitutional right," see *Fries,* 146 F.3d at 457 (7th Cir. 1998) (citing *Dennis v. Sparks,* 449 U.S. 24, 27-28 (1980)), "[o]f course, merely . . . being on the winning side of a lawsuit does not make a party a co-conspirator or a joint actor with the judge.'" *Fries,* 146 F.3d at 457 (quoting *Dennis,* 449 U.S. at 27-28). Furthermore, "mere allegations of joint action or a conspiracy do not demonstrate that the defendants acted under color of state law and are not sufficient to survive a motion to dismiss." *See Fries,* 146 F.3d at 457. Because Crenshaw has provided no evidence that Judge Dywan and the defendants reached an understanding to deprive her of her constitutional rights, nor that the defendants were willful participants in any joint activity with Judge Dwyan, Crenshaw has failed to present sufficient

evidence from which a jury could conclude that the defendants were acting under color of state law. Accordingly, defendants are entitled to summary judgment on Crenshaw's § 1983 claim.

3. 42 U.S.C. § 1985

Next, Crenshaw claims that the defendants conspired to violate her civil rights in violation of 42 U.S.C. § 1985. In order to establish a § 1985 claim, Crenshaw must demonstrate "(1) the existence of a conspiracy, (2) a purpose of depriving a person or class of persons of equal protection of the laws, (3) an act in furtherance of conspiracy, and (4) an injury to person or property or a deprivation of a right or privilege granted to U.S. citizens." *Hernandez v. Joliet Police Dept.,* 197 F.3d 256, 263 (7th Cir. 1999) (citing *Majeske v. Fraternal Order of Police, Local Lodge No. 7,* 94 F.3d 307, 311 (7th Cir. 1996). "In order to establish the existence of a conspiracy, the first element required in a § 1985(3) claim, a plaintiff must demonstrate that the conspirators have an agreement to inflict injury or harm upon her." *Hernandez,* 197 F.3d at 263 (citing *Hampton v. Hanrahan,* 600 F.2d 600, 621 (7th Cir. 1979), *rev'd in part on other grounds,* 446 U.S. 754 (1980)).

> The conspirators must act with a single plan, the general nature and scope of which is known to each would-be conspirator. The agreement may be inferred from circumstantial evidence, but only if there is sufficient evidence that would permit a reasonable jury to conclude that a meeting of the minds had occurred and that the parties had an understanding to achieve the conspiracy's

objectives.

Hernandez, 197 F.3d at 263 (internal citations omitted). Here, there is no evidence to support an inference that the defendants conspired to inflict injury or harm on Crenshaw, and no reasonable jury could conclude otherwise. Accordingly, defendants are likewise entitled to summary judgment on Crenshaw's § 1985 claim.

4. Abuse of Process

"[I]t is the well-established law of this circuit that the usual practice is to dismiss without prejudice state supplemental claims whenever all federal claims have been dismissed prior to trial." *Groce v. Eli Lilly & Co.*, 193 F.3d 496, 501 (7th Cir. 1999) (citing *Khan v. State Oil Co.*, 93 F.3d 1358, 1366 (7th Cir. 1996), *vac. on other grounds*, 522 U.S. 3 (1997)). Crenshaw's Indiana abuse of process claim against the defendants is accordingly DISMISSED.

IT IS THEREFORE ORDERED THAT defendants' Motion for Summary Judgement (docket #85) is GRANTED. Plaintiff Zena Crenshaw's 42 U.S.C. § 1983 and § 1985 claims are DISMISSED WITH PREJUDICE. Plaintiff Zena Crenshaw's remaining state law claim is DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED THAT defendant's Motion to Strike or Disregard (docket #139) is DENIED AS MOOT.

SO ORDERED,

Enter: March 26, 2001

JUDGE, UNITED STATES DISTRICT COURT